IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH
AT BILASPUR

Single Bench

S.A. No. 449 /05

APPELLANT PLAINTIFF : Ratna Bai Wd/o. Khageshwar Patel, Aged about 70 yrs, R/o. Vill. Jaimura, Tahsil and District Raigarh (C.G.)

VERSUS

RESPONDENTS DEFENDANTS :

1] Gaurishankar S/o. Tularam Mahant, Aged about 32 years,

2] Shivanlal @ Chhotu, S/o. Muku, Aged about 38 years,

3] Chhumukdas @ Rohasu S/o. Mumudas, Aged about 35 years,

4] Kenkra Bhatia @ Kheekdas S/o. Badridas, Aged about 35 years,

All above R/o. Jaimura Tahsil Kharsiya, District Raigarh (C.G.)

5] State of Chhattisgarh, Through: Collector, Raigarh, District Raigarh (C.G.)

6] Meera Bai D/o. Khageshar Patel, Wd/o. Late Salikram Patel, Aged about 35 years, R/o. Village Raigarh, Tahsil and District Raigarh (C.G.)

P.R. No. 2536/05
Presented by Shri V. K. Gandhar
dated 26/9/05

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SECOND APPEAL UNDER SECTION 100 OF CIVIL PROCEDURE CODE

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HIGH COURT OF CHHATTISGARH AT BILASPUR

S.A. No. 449 of 2005

Appellant/ Plaintiff : **Ratna Bai**

VERSUS

Respondents/ Defendants :

1. **Gaurishankar**
2. **Shivanlal @ Chhotu**
3. **Chhumukdas**
4. **Kenkra Bhatia @ Kheekdas**
5. **State of Chhattisgarh**
6. **Meera Bai**

Appellant by Shri Manoj Paranjpe, Advocate.

ORDER

(Passed on 28-11-2005)

Dhirendra Mishra, J

This is the appellant's/plaintiff's second appeal as Civil Suit No. 101-A/2002 filed by the plaintiff was dismissed by the Civil Judge, Class-I, Raigarh by the judgment and decree dated 05.02.2004 and his first appeal Civil Appeal No.5-A/2004 was further dismissed by the learned First Additional District Judge, Raigarh. (Parties hereinafter shall be referred to as per their description before the trial Court.)

2. Case of the plaintiff before the Courts below was that he filed a suit for declaration of title and perpetual injunction in respect of property described in the schedule annexed with the plaint averring that the property admeasuring 0.08 decimal was purchased by his father in the year 1941 by unregistered sale deed and since then his father and after his death, he was in peaceful possession of the same. However, in May 1995 the defendants started claiming that they have been allotted that suit property by the Tehsildar on Patta whereupon the plaintiff obtained a certificate of confirmation of possession from the Gram Panchayat. The defendants forcibly entered in the suit premises in October 1995 and damaged the house of the plaintiff. The incident was reported by the

plaintiff to the police. The defendants denied the allegation of the plaint and stated that the land in question was not Abadi land as claimed by the plaintiff and he was never in possession of Khasra No.304/2(K), in fact the land in question belonged to late Tularam and they inherited the same after the death of Tularam which was subsequently partitioned in two parts i.e. Khasra No.304/2(K) and 304/2(Kh). The area of Khasra No.304/2(Kh) is 05 decimal and Abadi land bearing Khasra No. 304/1 (K) is adjacent to this land.

3. On the basis of the pleadings of the respective parties, learned trial Court dismissed the suit by recording a finding that though the plaintiff is in possession of the suit property since 1941 after purchase in the year 1941 but he is not the title holder of Khasra No.304/2(K) and therefore, he is not entitled for perpetual injunction or for any damages as claimed.

4. The learned first appellate Court confirmed the judgment and decree passed by the trial Court by recording a finding that the plaintiff has failed to prove that Khasra No. 304/2(K), area 0.08 decimal was purchased by his father vide document of Ex.P/2 and that in fact the land bearing Khasra Nos. 304/2 (K) and (Kh) belonged to one Gaurishankar.

5. Learned counsel for the appellant/plaintiff has challenged the above concurrent findings of both the Courts below on the ground that the findings of facts recorded by the Courts below is perverse. It is submitted that both the Courts below have failed to appreciate the oral and documentary evidence available on record in its correct perspective and committed a material irregularity by decreeing the suit even after holding that father of the plaintiff had purchased the land in question vide sale deed dated 24.05.1941.The proposed substantial questions of law have been given in paragraph-7 of the memo of appeal.

6. Learned counsel for the appellant/plaintiff relying upon the judgment reported in **AIR 1988 SC 1858** in the matter of **Dilbagrai Punjabi V. Sharad Chandra** submits that the High Court is duty bound to examine the entire relevant evidence on record which has a direct bearing on the

disputed issue and in appropriate cases concurrent findings of facts can also be set aside.

7. Further relying upon the judgment reported in **AIR 2000 SC 426** in the matter of **Ishwar Dass Jain (dead) through LRs. Vs. Sohan Lal (dead) by L.Rs** it is argued by learned counsel for the appellant that where the findings of the Court of fact is vitiated by non-consideration of relevant evidence or the finding is based on erroneous approach to the matter, the High Court is not precluded from recording proper findings.

8. Learned counsel for the appellant further places his reliance on the judgment of the Supreme Court in the matter of **Yadarao Dajiba Sharawane (dead) by L.Rs. V. Nanilal Harakchand Shah (dead) and others** reported in **AIR 2002 S.C. 2849** and submits that where the judgment of the final Court of facts is based on misinterpretation of documentary evidence or on consideration of inadmissible evidence or based on ignoring material evidence, the High Court in second appeal is entitled to interfere with the judgment.

9. I have heard learned counsel for the appellant/plaintiff and perused the material available on record.

10. Both the Courts below have dismissed the suit on the basis of analysis of oral and documentary evidence available on record. The conclusion of the trial Court which has been subsequently affirmed by the learned first appellate Court is based on the finding that the plaintiff has not filed any document to show that the land bearing Khasra No.304/2 (Kh) is Abadi land whereas from the document of Ex.D/1 and D/2 the land in question is a Bhumi Swami land of Gaurishankar. The above finding is based on the admission of the plaintiff himself that he had never purchased the disputed land and the name of the defendants are recorded in the revenue records. The Courts below have also reached to the conclusion that the plaintiff is in possession of 9.5 decimal of land and it is not the case of the plaintiff that he purchased the larger area then the land in his possession.

11. However, in the instant case the findings of both the Court below of fact is based on sound appreciation of the evidence on record and is further

based on the admission of the plaintiff himself and thus in the aforesaid circumstances, the ratio of law laid down in the aforesaid judgments cited by learned counsel for the appellant/plaintiff have no application whatsoever in the present set of facts.

12. The findings of the trial Court is based on the appreciation of oral and documentary evidence available on record and also on the admission of the plaintiff himself. The learned trial Court passed the judgment after marshalling the evidence on record and the learned first appellate Court after considering the grounds raised by the plaintiff affirmed the judgment and decree passed by the trial Court rejecting the suit of the plaintiff. The plaintiff has not been able to show any perversity in the findings of both the Courts below.

13. Thus in the opinion of this Court, no question of law much less any substantial questions of law as proposed by the appellant/plaintiff is involved for adjudication of this appeal and the appeal being devoid of any merits deserves to be dismissed and the same is accordingly dismissed at the motion stage itself.

Sd/-
Dhirendra Mishra
Judge
28/11/2005